IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6928 OF 2004

The Para Medical Employees'
Co-operative Credit Society Ltd.
& Ors. ...Petitioners

Versus

Mrs.Shashikala Kamble & Ors. ...Respondents

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Mr.Rahul Rao with Vijay Pandey
i/b I.V.Rao for Petitioners.
Mr.A.S.Desai for Respondents 1 & 2.
Mr.M.H.Solkar, A.G.P. for Respondent No.5.

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CORAM: A.M.KHANWILKAR, J.

AUGUST 31, 2004.

P.C.

1. Heard Counsel appearing for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.Desai waives notice for Respondents 1 and 2. Mr.Solkar, A.G.P. waives notice for

Respondent No.5. Respondents 3 and 4 are formal parties. Hence, notice to Respondents 3 and 4 are dispensed with.

3. As short question is involved, the matter is heard for final disposal forthwith, by consent.

4. Briefly stated, Petitioners 2 to 5 were declared elected as members of the Managing Committee of the Petitioner No.1 Society for a period of five years on 17th June 2002 between 2002 to 2007. Respondents 1 and 2 filed Dispute/Election Petition before the Co-operative Court at Mumbai under Section 91 of the Maharashtra Co-operative Societies Act, 1960 challenging the election of Petitioners 2 to 5 within the statutory period.

5. During the pendency of the said dispute, Respondents 1 and 2 moved an application for amendment in June 2003, almost after one year from the filing of the election dispute, so as to implead remaining newly elected six members of the Managing Committee in the same election along with

Petitioners 2 to 5 herein, as party opponents in that dispute. This application was resisted by the Petitioners. The Trial Court rejected the application on the reasoning that such a course was not open, especially when two months time from the date of declaration of election was already over. The matter was carried in Revision at the instance of the Respondents 1 and 2, which Revision Application has been allowed by the Maharashtra State Co-operative Appellate Court, Mumbai by its decision dated July 12, 2004. This decision is subject matter of challenge in the present Writ Petition.

6. The Revisional Court has applied the principle relevant for amendment of Plaint in a civil Suit and has followed decision of the Apex Court in that behalf. The grievance made in this Petition is that the Revisional Court has clearly glossed over the settled legal position that the amendment such as the present one, cannot be permitted especially when the matter is one of election dispute and the principles applicable to amendment of a civil dispute cannot be the basis

for deciding the proposed amendment application. Learned Counsel for the Petitioner has placed reliance on the decision of our High Court reported in **1987 C.T.J. 676 in the case of The P. & T.Central Co-operative Society Ltd. vs. Judges Co-operative Court**, as well as of the Apex Court reported in **AIR 1969 SC 677 in the case of Mohan Raj vs. Surendra Kumar Taparia & Ors.** and **AIR 1969 SC 872 in the case of K.Venkateswara Rao & Anr. vs. Bekkam Narasimha Reddi & Ors.** to buttress the above proposition.

7. Counsel for the Respondents 1 and 2, on the other hand, has supported the view expressed by the Revisional Court and has relied on the decision of the Apex Court reported in **AIR 2001 SC 699 in the case of Ragu Thilak D.John vs. S.Rayappan & Ors.**, which is referred to by the Revisional Court in the impugned Judgement.

8. Having considered the rival submissions, I have no hesitation in setting aside the decision of the Revisional Court and instead, restoring the view taken by the Trial Court which had applied the

correct legal principle in relation to amendment of pleadings in Election dispute. The Trial Court has rightly relied on the decision of our High Court in the case of **The P. & T. Central Co-operative Society Ltd. (Supra)** to hold that the present amendment application cannot be entertained, as the same has been filed after two months from the date of declaration of the result of the election. No fault can be found with the said view taken by the Trial Court. On the other hand, the Revisional Court has committed manifest error in applying the principles of amendment of Plaint in a civil Suit, overlooking the legal requirements in relation to amendment of election dispute that too of adding new parties, which is well settled position. Counsel for the Petitioners has rightly relied on the three decisions referred to above.

9. Accordingly, the impugned Judgment cannot be sustained. The same is set-aside and instead, the decision of the Trial Court dated 6th April 2004 is restored, and consequently, the application for amendment of adding the remaining newly elected members of the Managing Committee filed by the

Respondents 1 and 2 is dismissed with no order as to costs. Rule made absolute on the above terms.

A.M.KHANWILKAR, J.